ACCC takes action against Murray Goulburn

28 April 2017

The ACCC has instituted proceedings in the Federal Court against Australia's largest milk processor, Murray Goulburn Cooperative Co. Limited (Murray Goulburn), alleging it engaged in unconscionable conduct and made false or misleading representations in contravention of the Australian Consumer Law. The ACCC also alleges that former managing director Gary Helou and former chief financial officer Bradley Hingle were knowingly concerned in Murray Goulburn's conduct.

"The allegations relate to representations made by Murray Goulburn to its Southern Milk Region dairy farmers between June 2015 and April 2016 about the average farmgate milk price (FMP) it expected to pay them during financial year 2015/16 (FY16)," ACCC Chairman Rod Sims said.

"The ACCC alleges that Murray Goulburn's conduct had an adverse impact on many farmers who, as a result of Murray Goulburn's representations regarding the farmgate milk price, had made business decisions."

"The farmers relied on Murray Goulburn's representations and were not expecting a substantial reduction in the farmgate milk price, particularly so close to the end of the season when it was not possible for them to practically readjust their expenditure," Mr Sims said.

The ACCC alleges that from June 2015 until February 2016, Murray Goulburn misled farmers by representing that it had a reasonable basis for setting and maintaining an opening FMP of $5.60 per kilogram of milk solids (kgms) and a forecast Final FMP of $6.05/kgms, and that it considered the forecast Final FMP of $6.05/kgms was the most likely outcome for FY16, when that was not in fact the case.

Further, the ACCC alleges that from February 2016 until April 2016, Murray Goulburn misled farmers by representing it had a reasonable basis for expecting to be able to maintain its opening FMP of $5.60/kgms for the remainder of the season, and that it considered a Final FMP of $5.60/kgms was the most likely outcome for FY16, when that was not in fact the case.

The ACCC alleges that, in all the circumstances, Murray Goulburn's conduct towards farmers was unconscionable. These circumstances include that Murray Goulburn:

- knew that farmers relied on information about the opening FMP and forecast Final FMP to make significant business decisions during the financial year;
- was aware that many farmers were unable to easily switch milk processors, particularly those contracted to Murray Goulburn;
- created an expectation that the opening FMP would be set conservatively and would be a minimum price, and that the final FMP would be higher than the opening price;
- knew that farmers expected that it would update the forecast Final FMP regularly to reflect material changes; and

- provided and maintained FMP forecasts despite knowing that these forecasts were overstated and unachievable in FY16 and that farmers were making decisions in reliance on these forecasts.

"Many farmers are in a relatively vulnerable trading position, and rely on transparent pricing information in order to budget effectively and make informed business decisions. In these circumstances, farmers were entitled to expect Murray Goulburn to have a reasonable basis for determining its pricing, and to regularly update farmers if there was any change in forecast prices," Mr Sims said.

The ACCC is seeking orders against Murray Goulburn that include declarations, compliance program orders, corrective notices and costs. The ACCC has decided not to seek a pecuniary penalty against Murray Goulburn because, as a co-operative, any penalty imposed could directly impact on the affected farmers. The ACCC is seeking declarations, pecuniary penalties, disqualification orders and costs against Mr Helou and Mr Hingle.

Separately, after careful consideration, the ACCC has decided not to take any further action against Fonterra Australia Pty Ltd in relation to the step-down of its FMP, announced one week after Murray Goulburn's revised Final FMP in April 2016.

"A major consideration for the ACCC in deciding not to take action was that Fonterra was more transparent about the risks and potential for a reduction in the farmgate milk price from quite early in the season," Mr Sims said.

Background

The FMP is a weighted average price that Murray Goulburn pays to dairy farmers from whom it acquires milk in its Southern Milk Region, which in FY16 comprised the dairy regions of Victoria, South Australia and southern New South Wales.

Before the start of each financial year, Murray Goulburn announces an 'opening price' FMP, which is the average FMP that it will pay to farmers from the start of the financial year. The opening FMP is expected to be the average minimum price farmers will receive during the financial year, and it is set at a conservative amount to facilitate increases, known as 'step-ups', throughout the year.

At or before the start of a financial year, MG also announces its 'forecast Final FMP', which is the average FMP that it expects to pay to farmers for milk acquired from them that financial year, and which is calculated at the end of that financial year. Throughout the financial year, the forecast Final FMP is updated, typically by way of 'step-ups'.

Murray Goulburn exclusively sets and revises its opening and forecast Final FMP for the season.

Dairy inquiry

The ACCC is continuing to conduct a broader inquiry into the competitiveness, trading practices, and transparency of the Australian dairy industry. A key focus of this inquiry is FMP pricing transparency. The ACCC will submit its report following the inquiry to the Treasurer before 1 November 2017. Further information is at www.accc.gov.au

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Media enquiries:
Media team - 1300 138 917